Symington file

12 March 1971

MEMORANDUM FOR THE RECORD

SUBJECT: S. 596 - The Case Bill

1. Accompanied Mr. Houston to a meeting with Carl F. Salans, Deputy Legal Advisor, Department of State, and Ambassador Wimberley Coerr, on the Case bill. On 11 February, Chairman Fulbright requested State to provide "coordinated Executive Branch comments" on the bill.

2. Background:

a. The bill imposes a requirement upon the Secretary of State to transmit to the Congress, or if national security considerations apply, to the foreign affairs committees of both houses, the text of any international agreement, other than a treaty, to which the United States is a party, within 60 days after it is entered into force. Where national considerations apply, the committees would be under an injunction of secrecy removable only by the President.

b. An identical bill was introduced by Senator Case in the wanning days of the last Congress. Case's floor statement at that time traces the genesis of his bill to an earlier bill of Senator Knowland's which had been proposed as an alternative to the Bricker amendment 14 years ago. Case resurrected the bill to assure that "...all non-treaty commitments which can commit or involve this country in possible hostilities must be examined before they are triggered by events" (Congressional Record, 2 December 1970, page 19190).

c. INR's initial reaction to the bill was, in effect, that so far intelligence arrangements have not been treated as "international agreements," subject to current law publication requirements, I U.S.C. 112a which now obligates State to publish "...all international agreements,

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other than treaties, to which the United States is a party that have been signed, proclaimed, or with reference to which any other financial formality has been executed...." Ergo, the Case bill, which follows the same wording, would not apply to intelligence arrangements.

3. Mr. Salans was interested in identifying intelligence agreements which, it could be argued, constituted international agreements to which the United States is a party and thus subject to the Case bill. Mr. Houston gave general examples in both the intelligence and para-military field, mentioning FBIS agreements, and agreements 25X1

25X1 Mr. Houston explained formality involved varied: informal agreements by station chiefs with the host service, and sometimes contractual arrangements where greater formality was felt to be desirable. Followup items: (a) classification of and repository for FBIS agreements; 25X1

4. In response to Mr. Salans question, Mr. Houston recommended a meeting with Fred Buzhardt, General Counsel, DOD, either separately or together with General Counsel, NSA, as 25X1 Mr. Buzhardt may wish, to discuss intelligence agreements concerning programs for which the Department of Defense is the executive agent. Mr. Houston said we would be glad to participate in this meeting if it would be helpful and suggested that Mr. John Warner might attend in his place.

5. Mr. Salans preferred to devote his first round of meetings to understanding the problem before coming to grips with possible solutions. He mentioned some possible options including: (a) persuading Case that his objectives can be met without legislation, (b) amendment to assure that secret international agreements will be transmitted according to committee jurisdiction over the principal agency involved. Mr. Houston told Salans we were forthcoming with our committees but that sometimes they did not want sensitive details, recognizing the critical importance of protecting intelligence sources and methods. Mr. Houston also said that we would strongly object to making such sensitive information
25X1A available to the Senate Foreign Relations Committee. Followup item: Mr. Houston will call and bring him up to date on the above discussion and his recommendation for a separate or joint meeting
25X1 involving Buzhardt and

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6. Conclusion:

a. INR's position (see paragraph 2c above) is legally sound. The term "international agreement" is not defined. The language in the Case bill concerning what is to be transmitted and communicated is the same language used in current law (1 U.S.C. 112a) for a publication in "United States Treaties and Other International Agreements." Further, the foreign affairs manual procedure relating to international agreements in 731.3 appears to affirm that no classified international agreement can exist in light of the 1 U.S.C. 112a publication requirement. (Admittedly, the meaning of 731.3 is somewhat clouded by 731.4 which recognizes instances where "immediate public disclosure .... would be prejudicial to the security of the United States.")

b. The Case bill proviso which specifically recognizes the possibility of secret agreements would be difficult for the Department to support as it did in 1956 with respect to the Knowland bill. The proviso would be a tacit admission that both U.S. law (1 U.S.C. 112a) and the United Nations Charter (article 102 requires publication and registration of international agreements) were being violated.

c. Ultimately, the Executive will be required to take a stand. There is a difference between Executive agreements and international agreements. (In this respect, it is noted that Salans' 3/2/71 draft memorandum uses these terms interchangeably.) The Executive's prosecution of foreign affairs is involved. It is the President's Constitutional responsibility to assure that these responsibilities are prosecuted in a manner which does not injure the public which elected him to carry out those responsibilities.

d. In view of Case's stated objective (see paragraph 2b above), the matter at issue could be narrowed to cover agreements constituting "national commitments," as this term was debated in 1969 in connection with Senator Fulbright's national commitments resolution, S. 85. In 1969 the proponents who would define national commitment to mean "a promise to a foreign government to use U.S. armed forces in hostilities" lost out on a 36 to 50 vote. The following definition was accepted: "the use of the armed forces on foreign territory, or a

promise to assist a foreign country, government, or people by the use of the armed forces or financial resources of the U.S., with immediate or upon the happening of certain events." A revision of the Case bill to change its focus from "international agreements" to "national commitments" in the restrictive version, while probably not acceptable to the Committee, might be a smart counter-proposal and would, of course, eliminate any problems for the intelligence community.

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Assistant Legislative Counsel

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